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ART. XII. — “*Message of President DAVIS.*” National Intelligencer, May 7, 1861.

SUCH is the title of a document which occupies more than four columns of the National Intelligencer of the 7th of May last. It is signed by Jefferson Davis, and purports to have been addressed to the “Gentlemen of the Congress” of the Confederate States, convened by special summons at Montgomery, in the State of Alabama, on the 29th of April, being the second session of the Congress; and to have been prepared in the execution of the duties of the author as President of the Confederation. The reason for the special convocation of the body to which it is addressed is stated to be the “declaration of war made against this Confederacy by Abraham Lincoln, President of the United States, in his proclamation issued on the 15th day of the present month” (April); and in the paragraph which follows this statement the writer speaks of the occasion as “indeed an extraordinary one,” which justifies him “in a brief review of the relations heretofore existing between us and the States which now unite in warfare against us, and in a succinct statement of the events which have resulted in this warfare; to the end that mankind may pass intelligent and impartial judgment on its motives and objects.”

This document therefore must be regarded as an authoritative exposition of the views entertained by the leaders of the Confederacy upon the subjects thus indicated. We extract that portion immediately following, which speaks of the former relations of the States.

“During the war waged against Great Britain by her colonies on this continent, a common danger impelled them to close alliance and to the formation of a Confederation, by the terms of which the colonies, styling themselves States, entered ‘*severally* into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them or any of them on account of religion, sovereignty, trade, or any other pretence whatever.’

“In order to guard against any misconstruction of their compact, the several States made explicit declaration, in a distinct article, that ‘*each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.*’

“Under this contract of alliance the war of the Revolution was successfully waged, and resulted in the treaty of peace with Great Britain in 1783, by the terms of which the several States were *each by name* recognized to be independent.

“The Articles of Confederation contained a clause whereby all alterations were prohibited, unless confirmed by the Legislatures of *every State*, after being agreed to by the Congress; and in obedience to this provision, under the resolution of Congress of the 21st February, 1787, the several States appointed delegates who attended a Convention ‘for the *sole and express purpose* of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions therein as shall, when agreed to in Congress *and confirmed by the States*, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union.’

“It was by the delegates chosen by the several States, under the resolution just quoted, that the Constitution of the United States was framed in 1787, and submitted to the *several States* for ratification, as shown by the 7th article, which is in these words:—

“‘The ratification of the *Conventions of nine States* shall be sufficient for the establishment of this Constitution *BETWEEN the States* so ratifying the same.’

“I have italicized certain words in the quotations just made, for the purpose of attracting attention to the singular and marked caution with which the States endeavored, in every possible form, to exclude the idea that the separate and independent sovereignty of each State was merged into one common government and nation; and the earnest desire they evinced to impress on the Constitution its true character,—that of a *compact BETWEEN* independent States.

“The Constitution of 1787 having, however, omitted the clause already recited from the Articles of Confederation, which provided in explicit terms that each State retained its sovereignty and independence, some alarm was felt in the States, when invited to ratify the Constitution, lest this omission should be construed into an abandonment of their cherished principle, and they refused to be satisfied until amendments were added to the Constitution placing beyond any pretence of doubt the reservation by the States of all their sovereign

rights and powers not expressly delegated to the United States by the Constitution.

“Strange indeed must it appear to the impartial observer, but it is none the less true, that all these carefully worded clauses proved unavailing to prevent the rise and growth in the Northern States of a political school which has persistently claimed that the government thus formed was not a compact between States, but was in effect a National Government, set up above and over the States. An organization, created by the States to secure the blessings of liberty and independence against foreign aggression, has been gradually perverted into a machine for their control in their domestic affairs; the creature has been exalted above its creators; the principals have been made subordinate to the agent appointed by themselves.”

We copy also the “succinct statement of the events which have resulted in this warfare,”—in other words of the aggressions on the part of the Northern States and people, and of the grievances endured by the South,—and add what seems to be stated as the foundation and justification of the remedy for those grievances, all which is in these words:—

“The people of the Southern States, whose almost exclusive occupation was agriculture, early perceived a tendency in the Northern States to render the common government subservient to their own purposes, by imposing burdens on commerce as a protection to their manufacturing and shipping interests. Long and angry controversy grew out of these attempts, often successful, to benefit one section of the country at the expense of the other; and the danger of disruption arising from this cause was enhanced by the fact that the Northern population was increasing by immigration and other causes in a greater ratio than the population of the South. By degrees, as the Northern States gained preponderance in the National Congress, self-interest taught their people to yield ready assent to any plausible advocacy of their right as a majority to govern the minority without control: they learned to listen with impatience to the suggestions of any constitutional impediment to the exercise of their will; and so utterly have the principles of the Constitution been corrupted in the Northern mind, that in the inaugural address delivered by President Lincoln in March last he asserts, as an axiom which he plainly deems to be undeniable, that the theory of the Constitution requires that in all cases the majority shall govern; and, in another memorable instance, the same Chief Magistrate did not hesitate to liken the relations between a State and

the United States to those which exist between a county and the State in which it is situated and by which it is created. This is the lamentable and fundamental error on which rests the policy that has culminated in his declaration of war against these Confederate States.

“In addition to the long-continued and deep-seated resentment felt by the Southern States at the persistent abuse of the powers they had delegated to the Congress, for the purpose of enriching the manufacturing and shipping classes of the North at the expense of the South, there has existed for nearly half a century another subject of discord, involving interests of such transcendent magnitude as at all times to create the apprehension in the minds of many devoted lovers of the Union that its permanence was impossible.

“When the several States delegated certain powers to the United States Congress, a large portion of the laboring population consisted of African slaves imported into the colonies by the mother country. In twelve out of thirteen States negro slavery existed, and the right of property in slaves was protected by law. This property was recognized in the Constitution, and provision was made against its loss by the escape of the slave. The increase in the number of slaves by further importation from Africa was also secured by a clause forbidding Congress to prohibit the slave-trade anterior to a certain date; and in no clause can there be found any delegation of power to the Congress authorizing it in any manner to legislate to the prejudice, detriment, or discouragement of the owners of that species of property, or excluding it from the protection of the government.

“The climate and soil of the Northern States soon proved unpropitious to the continuance of slave labor, whilst the converse was the case at the South. Under the unrestricted free intercourse between the two sections the Northern States consulted their own interest by selling their slaves to the South and prohibiting slavery within their limits. The South were willing purchasers of a property suitable to their wants, and paid the price of the acquisition without harboring a suspicion that their quiet possession was to be disturbed by those who were inhibited, not only by want of constitutional authority, but by good faith as vendors, from disquieting a title emanating from themselves.

“As soon, however, as the Northern States that prohibited African slavery within their limits had reached a number sufficient to give their representation a controlling voice in the Congress, a persistent and organized system of hostile measures against the rights of the owners of slaves in the Southern States was inaugurated, and gradually extended. A continuous series of measures was devised and pros-

ecuted for the purpose of rendering insecure the tenure of property in slaves : fanatical organizations, supplied with money by voluntary subscriptions, were assiduously engaged in exciting amongst the slaves a spirit of discontent and revolt ; means were furnished for their escape from their owners, and agents secretly employed to entice them to abscond ; the constitutional provision for their rendition to their owners was first evaded, then openly denounced as a violation of conscientious obligation and religious duty ; men were taught that it was a merit to elude, disobey, and violently oppose the execution of the laws enacted to secure the performance of the promise contained in the constitutional compact ; owners of slaves were mobbed, and even murdered in open day, solely for applying to a magistrate for the arrest of a fugitive slave ; the dogmas of these voluntary organizations soon obtained control of the Legislatures of many of the Northern States, and laws were passed providing for the punishment by ruinous fines and long-continued imprisonment in jails and penitentiaries of citizens of the Southern States who should dare to ask aid of the officers of the law for the recovery of their property. Emboldened by success, the theatre of agitation and aggression against the clearly expressed constitutional rights of the Southern States was transferred to the Congress ; Senators and Representatives were sent to the common councils of the nation, whose chief title to this distinction consisted in the display of a spirit of ultra fanaticism, and whose business was, not 'to promote the general welfare or insure domestic tranquillity,' but to awaken the bitterest hatred against the citizens of sister States by violent denunciation of their institutions ; the transaction of public affairs was impeded by repeated efforts to usurp powers not delegated by the Constitution, for the purpose of impairing the security of property in slaves, and reducing those States which held slaves to a condition of inferiority. Finally, a great party was organized for the purpose of obtaining the administration of the government, with the avowed object of using its power for the total exclusion of the Slave States from all participation in the benefits of the public domain, acquired by all the States in common, whether by conquest or purchase ; of surrounding them entirely by States in which slavery should be prohibited ; of thus rendering the property in slaves so insecure as to be comparatively worthless, and thereby annihilating in effect property worth thousands of millions of dollars. This party, thus organized, succeeded in the month of November last in the election of its candidate for the Presidency of the United States.

" In the mean time, under the mild and genial climate of the Southern States, and the increasing care and attention for the well-being

and comfort of the laboring class, dictated alike by interest and humanity, the African slaves had augmented in number from about 600,000, at the date of the adoption of the constitutional compact, to upwards of 4,000,000. In moral and social condition they had been elevated from brutal savages into docile, intelligent, and civilized agricultural laborers, and supplied not only with bodily comforts, but with careful religious instruction. Under the supervision of a superior race, their labor had been so directed as not only to allow a gradual and marked amelioration of their own condition, but to convert hundreds of thousands of square miles of the wilderness into cultivated lands, covered with a prosperous people; towns and cities had sprung into existence, and had rapidly increased in wealth and population under the social system of the South; the white population of the Southern slaveholding States had augmented from 1,250,000 at the date of the adoption of the Constitution, to more than 8,500,000 in 1860; and the productions of the South in cotton, rice, sugar, and tobacco, for the full development and continuance of which the labor of African slaves was and is indispensable, had swollen to an amount which formed nearly three fourths of the exports of the whole United States, and had become absolutely necessary to the wants of civilized man.

“With interests of such overwhelming magnitude imperilled, the people of the Southern States were driven by the conduct of the North to the adoption of some course of action to avert the danger with which they were openly menaced. With this view, the Legislatures of the several States invited the people to select delegates to Conventions to be held for the purpose of determining for themselves what measures were best adapted to meet so alarming a crisis in their history.

“Here it may be proper to observe, that from a period as early as 1798 there had existed in all of the States of the Union a party, almost uninterruptedly in the majority, based upon the creed that each State was, in the last resort, the sole judge as well of its wrongs as of the mode and measure of redress. Indeed, it is obvious that under the law of nations this principle is an axiom as applied to the relations of independent sovereign states, such as those which had united themselves under the constitutional compact. The Democratic party of the United States repeated in its successful canvass in 1856 the declaration made in numerous previous political contests, that it would ‘faithfully abide by and uphold the principles laid down in the Kentucky and Virginia Resolutions of 1798, and in the report of Mr. Madison to the Virginia Legislature in 1799; and that it adopts those principles as constituting one of the main foundations of its political creed.’

"The principles thus emphatically announced embrace that to which I have already adverted, the right of each State to judge of and redress the wrongs of which it complains. These principles were maintained by overwhelming majorities of the people of all the States of the Union at different elections, especially in the elections of Mr. Jefferson in 1805, Mr. Madison in 1809, and Mr. Pierce in 1852.

"In the exercise of a right so ancient, so well established, and so necessary for self-preservation, the people of the Confederate States in their Conventions determined that the wrongs which they had suffered and the evils with which they were menaced required that they should revoke the delegation of powers to the Federal Government which they had ratified in their several Conventions. They consequently passed ordinances resuming all their rights as sovereign and independent States, and dissolved their connection with the other States of the Union."

Our especial purpose at this time is, not to inquire into the truth of the allegation that the President of the United States had made a declaration of war in his proclamation, nor to consider how far the grievances alleged have any substantial foundation regarded as accusations against the government of the Union, nor to show how the freedom and material prosperity of the people who make the complaint have been protected and secured by the government which they now assail.

That we may not, however, be supposed to concede by silence that President Lincoln's proclamation can in any just sense be regarded as a declaration of war, or a commencement of hostile measures, we refer the reader to the proclamation itself, and to certain significant words of one L. P. Walker, claiming to be Secretary of War of the Confederate States, uttered at Montgomery on the evening of the day on which the bombardment of Fort Sumter commenced, which was three days before President Lincoln's proclamation was issued. They may be found in another column of the number of the National Intelligencer which contains the "Message." Sere-naded in celebration of that joyous occasion, and declining to make a speech when thus called out, the War Secretary, in the language of the telegraphic despatch,

"in a few words of electrical eloquence told the news from Fort Sumter, declaring, in conclusion, that before many hours the flag of the Con-

federacy would float over that fortress. ‘*No man,*’ he said, ‘*could tell where THE WAR THIS DAY COMMENCED would end, but he would prophesy that the flag which now flaunts the breeze here would float over the dome of the old Capitol at Washington before the first of May. Let them try Southern chivalry and test the extent of Southern resources, and it might float eventually over Faneuil Hall itself.*’”

If any one is curious to inquire into the truth and justice of the grievances alleged as a justification for the attempted secession, we must refer him, for the present, to the contemporary history, as found in the various publications of the day.

There is not before us at this time any question how far these alleged grievances, if true, might justify revolution. The right of revolution is now generally admitted by all who sustain the political dogma, that the people have a right to govern themselves. But while revolution seems thus to be well admitted as a right, the persons by whom, and the limits within which, the right may be exercised, have not thus far been very explicitly or accurately designated and defined. The generalizations which usually accompany the admission of the right, seem to require for its rightful exercise causes of the gravest character, without any distinct enumeration of those which should be regarded as sufficient; they assert its existence in the people, without specifying what classes of the whole population are entitled to that character, or what portion of the persons known as the people may exercise the right; and they insist upon a right of reform, without indicating very precisely what should be the legitimate objects of the reformation. — It must be admitted, that in all these particulars accuracy of specification and limitation is difficult, not to say impossible; and yet to revolution regarded as a *right*, there must be some limit, not very sharply defined, perhaps, beyond which the right does not extend. The *right* of revolution does not exist in all cases where the *power* of revolution is found. We may remark, before proceeding to our main purpose, that if the right of revolution may be exercised because portions of the community maintain the opinion, that the clause of the Declaration of Independence which asserts that all men are created equal and

endowed by their Creator with certain unalienable rights, embraces all human beings of whatever color or race, and denounce in round terms the dogmas of those who maintain that human slavery is a suitable foundation upon which to erect a republican government, some of them even contending manfully that slaveholding is a sin; or because strenuous efforts have been made by individuals to prevent the extension of slavery into the Territories, where it has no right to enter; or because a President has been elected who is not a slaveholder, nor the tool of those who sustain that patriarchal relation; — then the time may have arrived when the existing republic of the United States ought to be subverted by those at the South who are thereby aggrieved. — If a small minority of the whole people in a government, being the active agitators in a certain section, may lawfully exercise the right of revolution, through the instrumentality of misrepresentation and terrorism combined, then the active leaders of the attempted secession may come within the denomination of “the people,” in whom the right is admitted to exist. — If the right may lawfully be exercised for the purpose of taking from the great body of the people who possess it the power of regulating their own affairs, and of placing that power in the hands of a few, to be held by them for the purposes of their own ambition, then the attempted disruption of the Union may have a legitimate political purpose. — And if, through revolution, a government may with propriety be founded, having human slavery for its corner-stone, then the intelligent and impartial judgment of the civilized world may sanction the proceedings which have resulted in the formation of this Confederation of the Southern States; — not otherwise.

But Mr. Jefferson Davis and his compeers of the Confederate Congress do not base their action upon this right of revolution, which asserts itself in antagonism to the existing government, and seeks its overthrow, or its subversion to the extent covered by the antagonism, against the will and the right of the government to oppose it. If they did, they would stand at present, upon their own admission, as rebels against the government of the United States; for it must be borne in mind, that this right of revolution is such an imperfect right

that its very character of *revolution* depends upon the ultimate success of those who attempt to exercise it. It is strictly a personal right, "the right of the people to alter or abolish the government." *It does not exist as the right of a State*, or of any political organization, although such organization may be used for the more effectual exercise of it. In the inception of any effort to exert this right, all the action taken under it is insurrection and treason;—so known to the law; and so treated in fact, at the pleasure of the government assailed, until the insurrection has established itself, by the assertion of the right and the manifestation of a sufficient power to sustain it.

The Confederates do not set up, or attempt, a justification which would place them in the position of traitors on their own admission. On the contrary, they claim, under shelter of State authority, to withdraw from the Union by a State action, not having the character of an antagonism which the government may rightfully oppose and subdue, but the character of a peaceful withdrawal, which, on their political theory, the government ought to allow, because it is a political right, and it would seem, according to their notions, a perfect right.

The right of secession is asserted as a *State right*, consistent with the Constitution, and founded upon it, or upon the history preceding it, and the circumstances attending its formation and adoption;—a right to be exercised only through State action, and to be made effectual by a peaceful declaration of the fact of secession, which of itself accomplishes the separation of the State from the Union; any forcible opposition to it on the part of the United States being usurpation and oppression. Its theory, as stated in the document before us, and more at large in the speeches and writings of its paternal ancestor, is, that the Constitution of the United States is a compact, or agreement, entered into by the several States, as sovereign communities, by which the States created a government with certain limited powers, all powers not delegated to it, nor prohibited to the States, being reserved to the States respectively, or to the people;—that, the States being parties to the compact, each may judge for itself whether its obliga-

tions have been fulfilled, and the means and measure of redress required for any infraction of it, because there is no common arbiter or judge to settle disputes between the parties to it on such subjects;—and that if, in the judgment of any State the proper remedy for a violation of the compact is secession from the Union, such State may rightfully sever the connection by a declaratory act for that purpose, and that thereby the fact of secession is accomplished without revolution. Acting upon this assumption, the mode adopted for severing the connection, by the conventions in the several States which have attempted to secede, has been a formal repeal of the acts ratifying the Constitution of 1788, and of acts by which the State became a member of the Union, and by declaring the union subsisting between the seceding State and the United States dissolved. We propose at this time to discuss the soundness of these positions.

In determining whether such a right exists, we naturally turn in the first instance to the Constitution itself. But it is clear that this instrument contains no provision to that effect, in terms, nor any one which suggests such a result by any direct implication. It purports to be an organic and supreme law, limited as to its objects, and of course in its powers; and it appears to be framed on the model of the State constitutions, following their general principles so far as the objects to be attained and the limited powers granted will permit. The government organized under it is formed through the instrumentality of the Constitution itself, as a fundamental law enacted by “We, the people of the United States”; and not one formed by the States, or one which when formed represents the States; although from the previous existence of the States, as sovereign communities, except so far as they were bound by the Articles of Confederation, the Constitution could not be adopted without the assent and sanction of the several States;—for which reason, and because the States were still to exist, the ratifications were by “the people” of each State. In no instance was it supposed that the existing State government could make the necessary ratification as a State act. It provides for the organization of Legislative, Executive, and Judicial departments, and the

powers of these departments are to be exercised like similar powers under the State constitutions, and in a manner to control all State action within their proper sphere. The powers of the government organized under it usually act directly upon the people of the whole country, as the powers of the State government act upon all the people of the State; sometimes with reference to geographical or State lines, as the powers of the State government act with regard to county, town, or city limits. In general, none of these departments are indebted to State authority in their organization. They do not derive their powers from the States, nor represent States, nor act through any State agency, or as trustees of any powers for State purposes, or of powers dependent for their existence upon any State organization. The excepted cases—if the election of Senators by State Legislatures, requisitions upon States for their quota of militia to suppress insurrection, and the rendition of fugitives from justice, by the action of the State executive, may be supposed to be exceptions—are not founded upon any idea that State authority is a controlling force in the government of the United States, but exist for special reasons applicable to the particular instances;—that of the election of Senators being designed to guard against too great a preponderance of the larger States in the national councils; that in relation to the militia being a matter of convenience, because the militia is officered, and mainly organized, through the action of the several States; and that of the rendition of fugitives from justice arising from the fact that it is a matter between the State demanding and that rendering, rather than one which concerns the general welfare. State lines furnish convenient divisions for the purposes of the government; and in many instances, doubtless, State pride and State interests have had a controlling influence, shaping the provisions of the Constitution and laws so that State prosperity would be subserved; but this is merely incidental, through the action of individuals. It is none the less true, that the States have no control over any of the departments of the general government. They do not direct their action, in the first instance, nor is there, by the Constitution, any appeal to State judgment, or State sanction, through which errors

are corrected, or the action of the departments is affirmed or reversed. In the matter of the election of Senators, before adverted to, reliance is placed upon State action, and if no such action was had, for a sufficient length of time, a Senate could not be organized. But so it would be in a State, if no State senators were elected. That there is nothing peculiar in the government of the United States, in this regard, is evident from the fact, that if one or a dozen of the States should refuse or neglect to elect Senators, the Senate would be organized legally, notwithstanding the omission.

At the same time that there is nothing to show that the States, as such, have any control over the United States, or the government established under the Constitution, that instrument is full of provisions by which the States are prohibited from the exercise of powers which they would otherwise possess, and their authority as States is made subject and subordinate to the authority of the United States. In many important particulars, to the extent to which powers are granted to the government established by the Constitution, to the same extent the sovereignty of the States is expressly taken away; the powers granted being exclusive in the United States. In other particulars this is so by a necessary implication, because a power being expressly granted to the United States, the exercise of a similar power by a State would be inconsistent with the grant.

The Constitution declares that itself, the laws of the United States made in pursuance of it, and treaties made under its authority, shall be the supreme law of the land, by which the judges of every State shall be bound, anything in the laws or constitution of the State to the contrary notwithstanding. It is a perversion of terms to call the "supreme law of the land" a compact between the States, which any State may rescind at pleasure. It is not itself an agreement, but is the result of an agreement. And in the absence of an express declaration, or reservation, it is an entire subversion of all legal principles to maintain that the subordinate may at pleasure set itself free from the restrictions imposed upon it by the fundamental law constituting the superior, even if the subordinate have in other particulars an uncontrolled authority. The judges of each

State being expressly bound by the Constitution and laws of the United States, anything in the constitution or laws of the State to the contrary, how can a State law (or ordinance, which is but another name for a law) relieve them from the obligation? And if they are bound, the State and the people are bound also. The judges are expressly named, the more surely to prevent a conflict of jurisdiction and decision.

The clause of the Constitution providing for amendments adds another to the arguments which show it to have the character of an organic law, and not of a compact. Whether regarded as the one or the other, it is clear that it could not become obligatory upon a State, or the people of a State, until adopted by them. The people of one State could not ratify and adopt it for the people of another State. But, being adopted by all, it contains a clause binding upon all, providing that "the Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the Constitution, or, on application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

Now, considered as an organic law, the Constitution may be altered and amended in any mode which may be agreed upon and prescribed by the instrument itself; and this is a mode by which, through the action of certain political bodies, and certain legislative or popular majorities of a required number, the whole people are represented in the adoption of amendments, which become parts of the organic law. This mode, rather than a direct vote of the whole people, was doubtless agreed upon in order to make reasonable assurance that no amendment should be adopted affecting the rights and interests of the States, except by such a concurrence of State action as would fairly guard State interests, at the same time that there was a suitable representation of the whole people. It may be regarded as combining a representation of the States and of the people. It is an exemplification of the democratic dogma that the majority represent and express the will of the people, — the mode of ex-

pression provided in this case being supposed to be that best adapted to the particular purpose.

But if the Constitution is a compact between the States, any amendment which becomes a part of the Constitution is also a compact between the States, and the question arises, How is it that three fourths of the States, voting in favor of an amendment, are to make a compact with the other fourth, voting at the same time against it, and thus refusing to enter into the compact? How is it that the States voting to adopt, represent the States refusing to adopt, so that, by the vote of adoption, they make a compact between themselves and the others, against the will of the others expressed at the same time. Those voting to adopt act in their own behalf, thereby being one party to the bargain, and thus far it is well; but, on the compact theory, they must at the same time represent those who vote against the adoption, and thus make them another party to the bargain; when the others at the same time represent themselves, and refuse to make the bargain. Or if we state the compact theory with somewhat more of precision, each State is a party to the compact, agreeing with all the others, and one agrees with all the others notwithstanding she and several of the others refuse to agree. Thus, South Carolina, for instance, votes against a proposed amendment, and thereby refuses to enter into the new compact, but does still become a party to that compact, and agrees with the other States to adopt it, being represented by the others, several of them also voting against it, and at the same time not only making the contract for themselves, but aiding in making it for South Carolina also.

Will the advocate of the compact theory say that the provision relative to amendments, in the Constitution as first adopted, constitutes the States *agents* of one another, so that three fourths of the whole number may thus make an agreement for all, against the will of their principals, acting at the same time and dissenting? If this is so, we must add a new chapter to the law of Agency.

But without extending the argument, two or three illustrations may serve to exemplify the utter absurdity of a construction of the Constitution which should sanction the alleged right of secession.

The judicial department is rightfully divided into circuits and districts, embracing several States in a circuit, and mainly limited by State lines; not because the States have any control of the courts, but because State lines furnish convenient limits for such circuits and districts, except when there is a necessity for districting a State. Suits are instituted from time to time in these courts, questions are tried, verdicts are rendered, judgments entered, and cases are carried from these courts, and also from the State courts in certain cases, to the Supreme Court of the United States, sitting at Washington for the correction of errors. Now suppose a State is allowed to secede at its pleasure, what is the effect? If it may do so rightfully, then the judicial department of the United States holds all its powers, and even its existence, practically, within the limits of any State, at the pleasure of that State; for all its action is arrested at the point of time when the State pleases to secede. The witness on the stand is stopped in the midst of his testimony, on the passage of the act of secession; the juror, who has been sworn to try the case, goes his way without rendering a verdict; appeals are summarily and effectually dismissed, and writs of error quashed, by a nullification of the jurisdiction of the Supreme Court; the property seized by the marshal upon execution drops from his grasp; he and the district judge are removed from office; the State makes a general jail delivery of United States prisoners within her limits; and the pirate and murderer, under sentence of death, rejoice in a secession pardon. There is no escape from these conclusions.

The power to make treaties is, by the Constitution, vested in the President, with the advice and consent of the Senate, who may lawfully, in virtue of that power, enter into stipulations with foreign nations, which can be executed, according to their terms, only within the limits of a particular State. Suppose a treaty with Great Britain, containing a stipulation by which, in consideration of a concession by her of a right to American citizens to navigate the Thames, her subjects should have a similar right to navigate the Hudson, for a term of years; with various other stipulations relative to matters of high political and commercial interest having a

connection with this stipulation, or entered into in consequence of that agreement. It is an entire compact consisting of several parts. That treaty exists at the pleasure of the State of New York, which, although she cannot by any direct act close the navigable waters within her limits, may by an act of secession deprive British subjects of their rights under the treaty, and thus effectually break it, and by the infraction give Great Britain just cause for war,—not against her, for she did not make the compact, and merely exercises her lawful right,—but against the United States. If such may be the result, all treaties ought to contain a provision for a peaceable termination of their provisions on the secession of any State.

Not to multiply instances of the superlative folly of such an interpretation of the Constitution, let us make one more supposition. The debt which must be contracted in suppressing the present insurrection is likely to be large; Mississippi would be willing to repudiate her share, and Mr. Jefferson Davis would doubtless justify her in so doing, although she and he have had a large agency in causing it to be contracted. Suppose, instead of such a catastrophe, that all the States except New Hampshire, Vermont, Rhode Island, New Jersey, and Delaware should secede, and thus relieve their people from the obligation of the debt. The States named, remaining loyal and true, and in such case constituting the United States, would have rather a large load to carry, considering their resources and means of payment; but the burden must, by legitimate consequence, fall upon their shoulders, as they could not tax the people of the seceding States, nor very conveniently concentrate their forces so as to compel a contribution. We should ask pardon of the other loyal States for stating this supposition, were it made otherwise than as an effective illustration.

These considerations may be sufficient to show that the Constitution itself, considering it as a fundamental law, can contain no principle of action, nor recognize any principle, or action, by which its full operation, over all parts of the States embraced within the government, may be limited or subverted by State authority. Regarding the Constitution as a law, probably no one can be found, at the present day, to contend for the right of secession.

Let us now consider the argument upon the supposition that the Constitution has the character of a compact between the States.

Our first remark is, that, assuming it to be a compact between the States, with a right of secession attached, the same absurd consequences will follow which have already been suggested. A compact constituting a national judiciary, any circuit or district of which may be cut off in the manner and with the effect which is shown to attend the secession of a State, or one authorizing the formation of a treaty, binding upon all the parties, but which any one of the States can break at pleasure, leaving the responsibility for the breach upon the others, would be a most absurd compact. It is not therefore to be presumed that such a compact exists, but its existence must be proved by indubitable evidence; and we turn to the history preceding and attending the formation of the Constitution, to ascertain whether the States have any sovereign right to break the contract by which they associated themselves together for the purpose of a general government.

The political relations of the people of this country have had a twofold character from the commencement of the Revolution, and even from the early settlement of the Colonies, and there has been no time when any State has been at liberty to act with perfect freedom as a sovereign State. The Colonies were in most instances separate, and independent of each other, managing their local affairs, but all under the general jurisdiction and government of the mother country. They confederated together for the purposes of the common defence, at first as a council, without articles of agreement, to take into consideration their actual condition, and the differences subsisting between them and Great Britain. The Declaration of Independence shows the union which then existed between them as "one people," but still exhibits to some extent this twofold character. It was made, not by separate Colonies, or States, or governments, but by all united, and for all united. This is shown in the introduction, and in the recital of grievances; and the specific declaration with which it closes is that of an entire people. It commences, "When it becomes necessary for *one people* to dissolve the political bands

which have connected them with another people." The grievances alleged are the common grievances of all. The allegations against the king of Great Britain are, among other things, that "he has combined with others to subject *us* to a jurisdiction foreign to *our* constitutions and unacknowledged by *our* laws." The recital of remonstrances is of the same character. "*We* have petitioned for redress in the most humble terms; *our* repeated petitions have been answered only by repeated injury." This form of phraseology, which is found throughout, was not accidental. The declaration was "the unanimous declaration of the thirteen United States," or rather "of the good people of these Colonies"; but it was declared, not that the "United Colonies" are a free and independent nation, but that they are free and independent *States*, thus recognizing their separate existence, which has never been questioned. They were States, however, which were united, as if *one*, for the purposes for which Congress was assembled, but with imperfect authority to effect the purposes for which they were thus united.

This lack of authority led to the Articles of Confederation. They were reported in Congress, July 12, 1776, agreed to by the delegates, and proposed for ratification, November 15, 1777; ratified by the delegates of several States, authorized for that purpose, July 9, 1778, and by others from time to time, the last ratification being that of Maryland, March 1, 1781. These articles, without doubt, formed a compact. The third article expressly declares that "the said States hereby enter into a firm league," "binding themselves to assist each other."

There was no regular legislative, executive, or judicial department, but to some extent the articles conferred upon the Congress assembled under them powers of a national character; such as the power of determining on peace and war, with certain exceptions; of entering into treaties, granting letters of marque and reprisal, appointing courts for the trial of piracies and felonies committed on the high seas, and other powers, comprising legislative, executive, and judicial functions. They contained divers limitations upon the powers which each of the States would otherwise have possessed, so

that the action of the States should not interfere with that of Congress; and they imposed certain duties upon the States. As these Articles remained in full force up to the time of the adoption of the Constitution, it is in no sense true that the States at and immediately before that adoption were in all respects sovereign States. The second Article, in these words, "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled," admits that to that extent they had parted with their sovereignty. By the thirteenth article, it was agreed that "every State shall abide by the determination of the United States in Congress assembled, on all questions which by this Confédération are submitted to them."

Now, with this admitted character of a compact, it is quite clear that no State, after the adoption of the Articles, could secede at pleasure from the Confederation. So far from it, no one could retire without the assent of all the rest.

Waiving for the present the consideration of the particular provisions of the Articles, which show this conclusively, and examining the case as it is presented by the character of the Articles as above set forth, it is perfectly apparent that there was no right of secession. It is the nature of a contract to be binding upon the parties according to its terms, and the scope and operation it was designed to have. This compact prescribed duties to the States, and gave powers to the Congress. The purposes which were to be effected by it were of indefinite continuance. The duties of the States were without limitation of time. The powers of Congress were of the same character. Each party to the compact had duties to perform, and could not withdraw itself until those duties were discharged. Such are the legal rules in relation to contracts generally. And if this is true of the Articles of Confederation, it must be at least equally true of the Constitution itself, regarding it as a compact substituted for the Articles.

But it is alleged that this compact has been broken by some of the parties to it in divers particulars, principally relating to slavery, and that the other parties are therefore no longer bound by it, but may withdraw from further performance on their part.

If we were to admit the breach as alleged, the conclusion does not follow. There are cases in which, on the failure or refusal of one party to a contract to perform his part of it, the other party may treat the contract as rescinded. But this case is not within that rule; for it is equally well settled, as a general rule, that one party cannot treat a contract as rescinded unless all the parties can be placed in the condition in which they were before they entered into it, and that if there has been a partial performance, from which one party has derived a benefit, he cannot retain what he has received, and treat the contract as rescinded by reason of any failure or refusal of another party to perform the residue. There are, therefore, at least two valid reasons why the supposed breaches of the compact give no right to any State to secede. It is clear the parties could not be placed *in statu quo*; and certainly the seceding States, instead of placing the United States as far as they might in that position, did, when they broke the compact on their part, not only retain all the benefits they had received, but, by the seizure of forts, arsenals, mint, navy-yard, and the other common property, they endeavored to appropriate to their own use all the property which, in consequence of the compact, the United States had placed within their limits, but to which they had no title whatever. There is no principle of law by which one party to a contract is entitled to grab all the property which the contract has been the means of placing within his reach, and at the same time to say that, on account of some partial failure of performance on the other side, he rescinds the contract, and withdraws from its obligations.

There is still another reason why, on the compact theory, there has never been any right of secession. That theory, as we have seen, is, that the Constitution is a compact to which "each State acceded as a State, and is an integral party, its co-States forming as to itself the other party." The Kentucky Resolutions distinctly so state it. Now South Carolina herself will not for a moment allege that all the co-States have broken the compact. She makes no such accusation* against her dear sisters Georgia, Florida, and Alabama. *She* does not even aver that Mississippi broke the compact when she attempted to impair the obligation of her own bonds, in contravention of an

express provision of the Constitution prohibiting such a procedure. She alleges that Congress has heretofore passed unconstitutional tariff laws, and that Massachusetts and Wisconsin and some other States have passed laws in contravention of the clause of the compact in relation to fugitive slaves, which are void. But if the compact is by each State, as one party, with all the co-States as the other party, neither Congress, nor Massachusetts, nor Wisconsin, nor any dozen of the other States constitutes the other party to the compact; and although they may have severally done those things which they ought not to have done, and left undone those things which they severally ought to have done, the compact is not broken. "The other party" did not agree that they should do no unlawful acts. On this theory, then, what right has South Carolina, by a disruption of the Union, to injure New Jersey and Delaware, Indiana and Missouri, California and Oregon, against whom she charges no grievance, because she does not approve of the acts of Maine, Michigan, and Massachusetts? The former States cannot control the acts of the latter, nor those of Congress, and are not responsible for them. And so "the other party" with whom South Carolina made her contract has not been guilty of the alleged breach of contract, and has the right to hold her to her bargain. This is a legitimate conclusion from the construction of the compact, as set forth by the learned doctors who study constitutional law with the Kentucky Resolutions for their text-book, and who attempt to justify their acts of insurrection and treason, in levying war upon the United States, on the ground that their States (through their instrumentality it might be added) have previously passed acts of secession. The statement serves to show that the theory of secession sits in judgment upon itself, and is its own executioner.

There is no reasonable escape from these results, if the ordinary rules which govern the obligation of contracts are applicable to the case.

It seems to be supposed, however, that there are different principles or rules in relation to compacts between States from those which govern contracts between persons, because there is no tribunal to determine controversies between the former; and that for this reason each State is the sole judge of its

wrongs, and of the mode and means of redress. The Kentucky and Virginia Resolutions of 1798 are relied upon by Mr. Jefferson Davis to sustain this proposition. Those resolutions, it is well understood, had their origin in the alien and sedition laws passed by Congress in 1798. They relate entirely to unconstitutional acts of Congress, and not to those of States or individuals ; and no small part of their object was to assert and maintain a strict construction of the Constitution, and to deny the authority of the judicial and other departments of the United States to determine conclusively the extent of their powers under it. They endeavor to maintain, in general terms, a right in the States to judge and determine respecting the extent of the powers of the general government under the Constitution, and they declare the acts mentioned unconstitutional. But it is quite clear that those who adopted them did not suppose that these resolutions had any effect to nullify those laws within the respective States adopting the resolutions. They called for the co-operation of the other States ; but it is by no means certain that it was supposed that similar declarations of unconstitutionality, even by all the States, would have any effect, except as they might operate upon Congress to induce a repeal of the obnoxious laws, or perhaps upon the judges, whenever the courts should be required to pronounce a decision. The closing part of the last of the Kentucky Resolutions shows clearly that it was not supposed that the declarations of that State had had any effect to arrest the operation of the acts. It is in these words :—

“ That this Commonwealth does, therefore, call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes hereinbefore specified, plainly declaring whether those acts are or are not authorized by the Federal compact. And it doubts not that their sense will be so announced, as to prove their attachment unaltered to limited government, whether general or particular, and that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked on a common bottom with their own : That they will concur with this Commonwealth in considering the said acts as so palpably against the Constitution, as to amount to an undisguised declaration that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these States of all powers whatso-

ever : That they will view this as seizing the rights of the States, and consolidating them in the hands of the general government with a power assumed to bind the States, not merely in cases made federal, but in all cases whatsoever, by laws made, not with their consent, but by others against their consent : That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority ; and that the co-States, recurring to their natural right in cases not made federal, will concur in declaring these acts void and of no force, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress."

The seventh of the Virginia Resolutions, which calls for a similar co-operation, is as follows :—

"That the good people of this Commonwealth having ever felt, and continuing to feel, the most sincere affection to their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measure will be taken by each for co-operating with this State in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people."

The resolutions were transmitted to the other States, and by several of them the principles asserted were as emphatically denied. As they are usually referred to by the advocates of secession as an authority sustaining their positions, we copy also the general declarations which are relied on for that purpose, being the first of the Kentucky and the third of the Virginia Resolutions. The following is the first of the Resolutions of Kentucky, passed Nov. 10, 1798 :—

"*Resolved*, That the several States composing the United States of America are not united on the principle of unlimited submission to their general government, but that by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each State to

itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthorized, void, and of no force: That to this compact each State acceded as a State, and is an integral party, its co-States forming as to itself the other party: That the government created by this compact was not made the exclusive or final *judge* of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

We now quote the third of the Virginia Resolutions, passed in the House of Delegates, December 21, 1798, yeas 100, *nays* 63, and subsequently in the Senate, 14 to 3:—

"That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."

The first remark which occurs in relation to both of these resolutions, in their connection with this subject, is, that they do not suggest that the election of a President from one section rather than another, or of one who entertains opinions in which certain sections do not concur; or any anticipation of measures which may or may not be adopted; or that any act of a State, especially any such act which may come under the cognizance of the judicial tribunals and be declared void,—furnishes a case in which a State may "interpose for arresting the progress of the evil." In the next place, they assert no right of secession as a State remedy for the exercise by Congress of powers not granted by the compact, nor for any other grievance. If they intend to insist on a right of revolution as a measure of redress, they may be

in accordance with received principles. If they mean anything else, the specification of it is not apparent. Mr. Madison, who must have known something of their meaning, denied that they sanctioned nullification, and they give as little support to secession. But, further, if they had contained an explicit declaration of a right of secession, this would prove nothing. The resolutions and platforms of political parties, in times of party excitement, whether in or out of the halls of legislation, do not furnish any authentic expositions of the principles of constitutional law.

While there is nothing in the Constitution, even supposing it to be a compact, which can sustain the position that each State may judge respecting infractions of it, and may withdraw from its obligations when she pleases to consider herself aggrieved, there seems to be nothing in the principles of public law to give countenance to such a right. Compacts between States are, in principle, as binding as those between persons. There is no court to interpret and enforce them, and each party may therefore insist upon its own construction. If they do not agree, however, the result is not that the compact falls, and its obligations cease, nor that either party may declare it no longer in force, or secede from it on an allegation of infraction by the other, that other being bound to submit to this judgment and determination; but each party has the right to insist on the performance of the agreement, and the mode of enforcing or of obtaining satisfaction for any breach of it is War. We are not aware that a right of peaceable *withdrawal* from a treaty is recognized anywhere, unless the terms of the treaty, or the circumstances, show such to have been the intention of the parties to it; or unless an infraction of it justifying such a course is admitted. One party has the power of interpreting for itself, and may perform or not perform. But the other party has just the same right of interpretation, and may insist upon a strict fulfilment of the stipulations, and punish non-performance in the only mode which the nature of the case admits. The right to punish non-performance shows that there is no right to refuse further compliance. For these reasons, among others, some treaties contain a clause providing that the treaty, or perhaps certain

provisions of it, may be terminated on notice for that purpose.

If, then, the Constitution were a compact to which each of the States is a party, being the sole judge of its wrongs and of the modes of redress, so that one State, judging that it was injured, should determine to secede as a measure of redress ; each and every of the other States would have an equal right to judge and determine that the seceding State was not injured by the alleged grievance, but that they were severally and jointly aggrieved by the attempted secession and refusal further to comply with the obligations of the compact, and that the proper mode and means of redress for that injury was war, jointly and severally waged against the seceding party. This seems, practically, to be the state of things at the present time. Some of the parties determine that they will attempt to secede. They repeal their ratifications (which, by the way, are not subject to repeal) ; appropriate to their own use so much of the common property as is within their borders ; fire upon an unarmed vessel carrying supplies to one of the forts belonging to the general government ; reduce the fort by a bombardment sustained by seven thousand men, more or less, against some seventy in the occupation of it ;— and then they say, “ All we want is to be let alone.” At the same time they are investing another fort, and threatening destruction to it and its defenders if it is not surrendered.

The other parties to the compact determine that they are aggrieved by these proceedings, and will resist the attempt ; and they also resort to gunpowder, shot, and shells, on their part, as stringent legal and equitable powers, whereby to regain possession, and to compel restitution and specific performance of the compact. President Lincoln thereupon issues his proclamation, calling for militia to execute the laws and suppress the insurrection ; and this, according to the Message before us, constitutes a declaration of war.

Furthermore, viewed as a compact or treaty between States, it is what is termed a “ *transitory convention*,” and cannot be revoked, rescinded, or annulled, repudiated or seceded from, by any State, on account of its nature.

“ General compacts between nations,” says Mr. Wheaton, “ may be

divided into what are called *transitory conventions*, and *treaties* properly so termed. The first are perpetual in their nature, so that, being once carried into effect, they subsist independent of any change in the sovereignty and form of government of the contracting parties; and although their operation may, in some cases, be suspended during war, they revive on the return of peace, without any express stipulation. Such are treaties of cession, boundary, or exchange of territory, or *those which create a permanent servitude in favor of one nation within the territory of another.*" — *Wheaton's Elements of International Law*, 6th ed., p. 332, Sect. 9.

On the theory of compact, the Constitution contains an agreement of each State with the other States, that the government organized under it, for the benefit of all the States, may exercise certain rights within the limits of each State, by an occupation of the soil, for the uses and purposes for which the government is established. It confers, by agreement and grant, a power of *eminent domain*; a right to take lands for forts, arsenals, navy-yards, military roads, and other public uses; a right of occupation within the waters of each State by a naval force when necessary; a right on land and water for the collection of customs; a right of taxation, and of collecting the taxes by sales of lands and goods; a right to have court-houses, to hold courts, to reverse the judgments of the State courts in certain instances, and to execute final process against persons and property. These grants of rights to occupy, take, possess, use, tax, try, judge, reverse, and do final execution within the limits of every State, show a permanent servitude of a most extensive character; the United States, representing all the States, being the *dominant*, and each State a *servient* party. From their very nature these rights and powers cannot be resumed or revoked at the pleasure of any State, or of any number of States less than the whole. And it may be added that they impair, somewhat effectually, the supposed absolute sovereignty of the separate States. Civil war may suspend the exercise of these rights and powers, but it does not annul or take them away.

It has been urged by the advocates of secession, that the tenth amendment of the Constitution, which provides "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the

States respectively, or to the people," sustains their positions. If it were shown that the States had a right of seceding from the Union before there was any Union to secede from, there would be some foundation for this suggestion, as it is quite clear that no right of secession was granted to the United States; and the conclusion would follow, that it was among the rights reserved. But the supposition of an existing right to rescind a particular contract before the contract is entered into, of the existence of a right to secede from a Union which is not formed and may not exist, and then a reservation of this right of secession by a general declaration, after the Union was formed, that powers not granted were reserved, is simply an absurdity. There could be no right of secession until there was something to secede from. Such a right could come into existence only upon or after the creation of the Union which was to be broken up by the exercise of it; and it is preposterous, therefore, to say it was a right reserved to the States by the general reservation of all powers not granted or prohibited, which referred only to rights or powers pre-existing.

But this argument may be disposed of in another manner. A similar reservation, but in much stronger terms, was contained in the second clause of the Articles of Confederation, in these words: "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled." The change in the phraseology of the reservation, or declaration, may be worthy of note. Now if this earlier, and in terms much more ample reservation, found in those Articles, did not include a right of secession from the Confederation, upon alleged grave violation of the powers conferred upon Congress by that instrument, still less can the tenth amendment of the Constitution sustain any such right to judge of infractions of the Constitution, and to withdraw by virtue of the powers reserved. And this leads us to a concluding and conclusive argument to show the perpetuity of the Union as established by the Constitution, and according to the Constitution, even if that instrument is supposed to have the character of a compact.

We have thus far endeavored to show that there was no

right of secession from the Union established by the Articles of Confederation, and that there is no such right under the Constitution, upon general principles applicable to such instruments, whether regarded as compacts or as organic laws. We now proceed to make assurance doubly sure upon this point, by specific citations from the express language of the Articles, and of the Constitution itself, and from official documents connected with their adoption, which admit of no misapprehension.

The Articles of Confederation expressly, explicitly, and in the most emphatic manner, established a "Perpetual Union" between the States. As prepared and submitted to the States for ratification, they were entitled "Articles of Confederation and Perpetual Union." And the closing part of the last of the Articles is :—

"And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State."

The Articles having been agreed upon in Congress on the 15th of November, 1777, on the 17th of the same month that body transmitted copies to the several States, for the consideration of their respective legislatures, accompanied by circular letters, in which it was represented that, "to form a permanent union accommodated to the opinion and wishes of so many States, differing in habits, produce, commerce, and internal police, was found to be a work which nothing but time and reflection, conspiring with a disposition to conciliate, could mature and accomplish." In recommending them to the immediate and dispassionate attention of the legislatures of the several States, it was said :—

"Let them be candidly reviewed, under a sense of the difficulty of combining in one general system the various sentiments and interests of a continent divided into so many sovereign and independent communities,—under a conviction of the absolute necessity of uniting all our councils, and all our strength, to maintain and defend our common liberties; let them be examined with a liberality becoming brethren and fellow-citizens surrounded by the same imminent dangers, con-

tending for the same illustrious prize, and deeply interested in being forever bound and connected together by ties the most intimate and indissoluble."

Still further:—The closing recommendation, of set purpose, it would seem, to show again that the union was to be perpetual, repeats the title:—

"And to each respective Legislature it is recommended to invest its delegates with competent powers, ultimately, in the name and behalf of the State, to subscribe Articles of Confederation and Perpetual Union of the United States."

A preamble was affixed to the Articles, reciting that the delegates in Congress assembled did on the 15th of November, 1777, "agree to certain Articles of Confederation and Perpetual Union between the States," which are then set forth at large; and they are followed by the formal instrument of ratification, subscribed by the delegates authorized for that purpose, in these words:—

"And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of and to authorize us to ratify the said Articles of Confederation and Perpetual Union: *Know ye*, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and Perpetual Union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual."

It seems impossible to read the foregoing extracts without a conviction that there was an industrious repetition of the idea that the Union under the Articles was to be perpetual, so that no doubt should ever after be entertained respecting it; and certainly no agreement to that effect could be more explicit than that contained in the closing parts of the Articles and of the ratification.

The Articles of Confederation which established this “perpetual,” “permanent,” “indissoluble” Union, proved to be inadequate to the purpose for which they were adopted, and proceedings were had, from time to time, in Congress, with a view to amendments. The history of the change by which a Union under the Constitution was substituted for that under the Articles of Confederation, need not be set forth at this time. The great defect appeared to be a lack of power in Congress to regulate commerce. But at a meeting of commissioners from five States, held at Annapolis, in September, 1786, a report was made to their respective States, and copies transmitted to Congress, in which they represented the necessity of a convention, with a full attendance and enlarged powers; and recommended the appointment of commissioners “to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the legislatures of every State, will effectually provide for the same.” A convention was assembled, and finally reported the Constitution, providing for regular legislative, executive, and judicial departments, with enlarged, but limited powers, appropriate to such departments, and of a national character; by reason of which it became necessary to submit it to the people for ratification. It was ratified, and thus the government organized under it was substituted for the administration existing under the Articles of Confederation. The reasons for its adoption, summarily set forth in the preamble of the instrument itself, are “*to form a more perfect Union, establish justice, insure domestic tranquillity, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.*”

Now it appears to be preposterous to contend that this more perfect Union, established for posterity as well as for the existing generation, and thus substituted for the perpetual, indissoluble Union under the Articles, is one which was to exist only at the pleasure of each and every State, and to

be dissolved when any State shall assert that it is aggrieved, and repeal the act of ratification. The Union could not be made "more perfect" in relation to its endurance. It certainly was not intended to be made less perfect in that particular.

These considerations show further, that the political axiom, that "all rightful government is founded upon the consent of the governed," cannot justify or excuse secession. It might be urged that the principle asserted is not that government is founded upon the consent of all the persons to be governed, but we pass that. The consent has been given by the ratification of the Constitution. The compact has been made by the Fathers, who vindicated their title to the country, and their right to form the institutions under which it should be governed. The present generation comes in as their successors, and is thus "in privity." The covenant "runs with the land," and binds all persons who occupy it. If any one desires to relieve himself from the obligations which it imposes, he can secede, personally, by transferring his domicile to some other country.

ART. XIII.—1. *The Life of Hugh Latimer.* By GEORGE L. DUYCKINCK. New York: General Protestant Episcopal Sunday School Union and Church Book Society. 1861. 12mo. pp. 204.

2. *Fruitfull Sermons: preached by the Right Reverend Father, and constant Martyr of Jesus Christ, Master HUGH LATIMER, newly imprinted with others not heretofore set forth in print, to the edifying of all which will dispose themselves to the reading of the same.* Seene and allowed according to the Order appointed in the Kings Majesties Injunctions. London. 1635. 8vo. pp. 656.

MR. DUYCKINCK has given us a charming memoir of Father Latimer, making the most out of his very scanty materials, telling what he had to tell of the life-story gracefully, but